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 KEVIN SPACEY FOWLER and
 M. PROFITT PRODUCTIONS, INC.

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

JOHN DOE, an individual,	)	Case No.: 2:19-cv-00750-RSWL (SSx)
)	
Plaintiff,	)	SUPPLEMENTAL
	)	DECLARATION OF JAY P.
vs.	)	BARRON IN SUPPORT OF
	)	DEFENDANT FOWLER'S <i>EX</i>
KEVIN SPACEY FOWLER, an	)	<i>PARTE</i> APPLICATION FOR AN
individual, M. PROFITT	)	ORDER TO SET DEADLINES
PRODUCTIONS, INC., a California	)	UNDER RULE 26 DUE TO
Corporation, and DOES 1-9, inclusive.	)	PLAINTIFF'S WILLFUL
	)	REFUSAL TO TIMELY ENGAGE
Defendant.	)	IN THE REQUIRED RULE 26(f)
	)	CONFERENCE

Complaint Filed: September 27, 2018

1 I, Jay P. Barron, declare as follows:

2 1. I am an attorney duly admitted to practice in the State of California and
3 in the United States District Court for the Central District of California. I am senior
4 counsel with the law firm Keller/Anderle LLP, counsel of record for Defendants
5 Kevin Spacey Fowler and M. Profitt Productions, Inc. I make this declaration in
6 support of Defendant Fowler's *Ex Parte* Application For An Order To Set Deadlines
7 Under Rule 26 Due to Plaintiff's Willful Refusal To Timely Engage In Required
8 Rule 26(f) Conference (the "Application"), and to supplement my previously-filed
9 declaration in support of the Application. I have personal knowledge of the
10 information stated below and could testify to it under oath.

11 2. I have reviewed the memorandum and declaration filed by Plaintiff in
12 opposition to the Application. (See ECF Nos. 32, 32-1.) I make this declaration to
13 inform the Court about certain misrepresentations made in those papers.

14 3. The opposition provides a false and misleading description of the call
15 between Ms. Olszewska and me on March 14, 2019. First, the opposition and
16 supporting declaration selectively quote from my original declaration to suggest it
17 was "factually incorrect," and states that my declaration's description of the call
18 includes the claim that "Ms. Olszewska suggested . . . Plaintiff would agree to at
19 least some of the requested relief after seeing the Application." (See Opp. at p. 4 &
20 Olszewska Decl., ¶ 6 [emphasis omitted].) Plaintiff's representation of my
21 declaration is false. My actual declaration did not represent Plaintiff would agree to
22 some of the requested relief after seeing the Application; instead, the cited text of
23 my declaration, with underlining reflecting the portions omitted by Plaintiff through
24 their use of an ellipsis, states: "Ms. Olszewska suggested Plaintiff would oppose the
25 Application but left open the possibility Plaintiff would agree to at least some of the
26 requested relief after seeing the Application."

27 4. Further, the suggestion that Ms. Olzewska did not understand Mr.
28 Fowler would be filing the Application shortly after our telephone call is contrary to

1 the substance of our discussion. Based on Ms. Olszewska's unwillingness to agree
2 to the relief sought in the Application, and Plaintiff's counsel's emphatic and
3 consistent position they would not engage in the Rule 26(f) conference until after
4 the Court rules on their remand motion, I definitively and unequivocally informed
5 Ms. Olszewska that we would be filing the Application. In fact, I informed her that
6 it likely would be filed within 30 minutes after our call.

7 5. While Ms. Olszewska's declaration attaches an e-mail she sent to me
8 on March 14, 2019 after the Application was filed, she neglected to include the
9 entire e-mail chain, which included my response sent a few hours later that day at
10 8:48 p.m. Attached as **Exhibit A** to this declaration is a true and correct copy of the
11 complete e-mail chain, including my response.

12 6. In my response e-mail, I reiterated the disingenuousness of Plaintiff's
13 counsel's belated position that their refusal to engage in the Rule 26(f) had
14 something to do with the possibility of waiving their remand argument. That
15 purported justification was not previously expressed at any time during my repeated
16 efforts to meet and confer or in Ms. Harrison's emphatically stated position that
17 Plaintiff would not engage in the Rule 26(f) conference. Nor does that *post hoc*
18 justification have any merit because, as I explained on yesterday's call, the lone case
19 mentioned by Ms. Olszewska had no relevance to Plaintiff's motion to remand. My
20 e-mail response sent on March 14th, at 8:48 p.m., which is consistent with my
21 discussion with Ms. Olszewska from earlier that day, states in part:

22 On our call, you raised a concern about potential waiver if you engaged
23 in the Rule 26(f) conference, as required by the rules. I pointed out that
24 Genie's recent e-mails were emphatic and definitive about plaintiff's
25 refusal to comply with Rule 26(f). She never expressed waiver as a
26 concern. If you had stated a need to expressly reserve the arguments
27 raised in your pending motion to remand, we could have quickly
28 resolved that issue and continued with the Rule 26(f) conference. For
your side to now take that position after our repeated attempts to
schedule the conference, after the deadline to hold it has passed, and
without any previous explanation or disclosure of that position before
we provided notice of our application, is not good faith. More

1 fundamentally, your position is incorrect. On our call earlier today, you
2 cited and briefly described one case which apparently raised the
3 possibility of waiver if a party engages in a Rule 26(f) conference. But
4 it was clear from your brief description of the case that it had no
5 applicability here because it concerned a party challenging a purported
6 defect in the notice of removal. That is not the argument plaintiff has
7 made here; instead, plaintiff has attempted to join a non-diverse party
8 after removal and seeks to remand on that basis. When I pointed this
9 out, you recognized the distinction.

10 (Emphasis added.)

11 7. The opposition also misconstrues an item of requested relief sought in
12 the Application. The Application does not seek a “premature” ruling on Plaintiff’s
13 motion to proceed anonymously or any other motion. (*See Opp. at p. 2.*) Plaintiff
14 still has not disclosed his identity to Mr. Fowler -- *the party against whom he is*
15 *asserting claims*. The request in the Application that Plaintiff immediately disclose
16 his identity to defense counsel does not vitiate or circumvent Plaintiff’s pending
17 motion to proceed anonymously or Defendants’ Rule 12 motion, both of which
18 more centrally concern whether Plaintiff can establish that this is a rare “exceptional
19 case” that justifies deviating from the longstanding requirement of pleading publicly
20 in one’s own name. Instead, the Application only seeks for Plaintiff to disclose his
21 identity to Defendants and their counsel, as there is no justification to keep an
22 opposing party in the dark about a plaintiff’s identity.

23 I declare under the penalty of perjury that the foregoing is true and correct to
24 the best of my knowledge.

25 Executed on March 15, 2019.

26
27
28

/s/ Jay P. Barron

Jay P. Barron

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 and not a party to the within action. My business address is 18300 Von Karman Avenue, Irvine, California 92612-1057. On **March 15, 2019**, I served the foregoing document described as

**SUPPLEMENTAL DECLARATION OF JAY P. BARRON IN SUPPORT OF
DEFENDANT FOWLER'S EX PARTE APPLICATION FOR AN ORDER
TO SET DEADLINES UNDER RULE 26 DUE TO PLAINTIFF'S WILLFUL
REFUSAL TO TIMELY ENGAGE IN THE REQUIRED RULE 26(f)
CONFERENCE**

on the following-listed attorneys who are not on the list to receive e-mail notices for this case (who therefore require manual notice) by the following means of service:

SERVED BY U.S. MAIL: There are currently no individuals on the list to receive mail notices for this case.

SERVED BY CM/ECF. I hereby certify that, on **March 15, 2019**, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. The filing of the foregoing document will send copies to the following CM/ECF participants:

The following are those who are currently on the list to receive e-mail notices for this case.

Genie Harrison, genie@genieharrisonlaw.com
Amber Phillips, amber@genieharrisonlaw.com
Mary Olszewska, mary@genieharrisonlaw.com

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on **March 15, 2019** at Irvine, California.

/s/ Courtney L. McKinney

Courtney L. McKinney